Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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NO. 86-1815

In the Supreme Court of the United States

OCTOBER TERM, 1986

CREDIT BUREAU SERVICES-NEW ORLEANS, D/B/A CHILTON CORPORATION,
Petitioner,

VERSUS

THOMAS K. PINNER,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF THOMAS K. PINNER IN OPPOSITION TO PETITION

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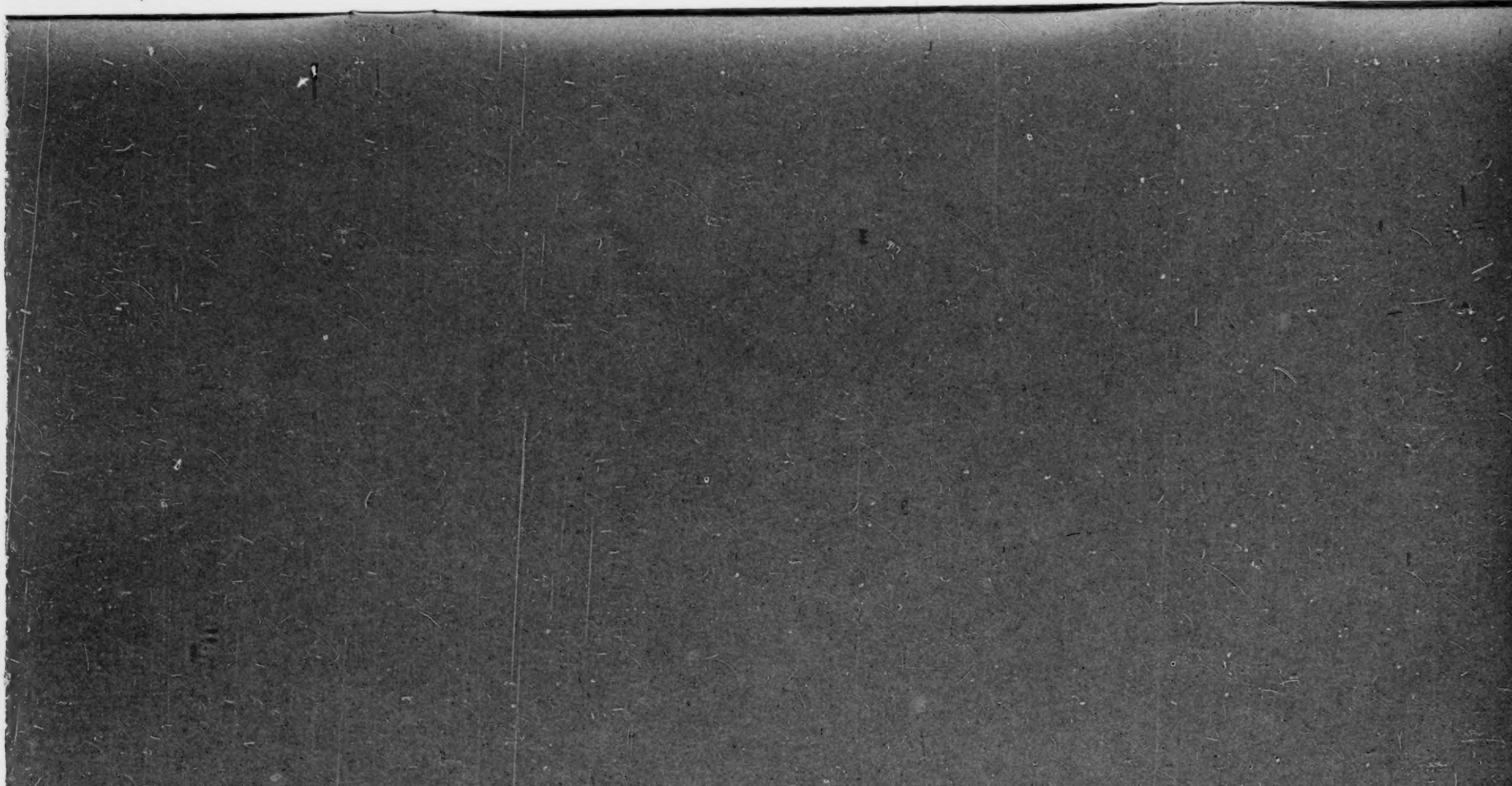

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SUMMARY OF ARGUMENT

The gratuitous finding by the Court of Appeal that plaintiff owed money to the Sherwin-Wiliams Company on his disputed employee account cannot serve as an excuse for the many failures of the Chilton Corporation to comply with the mandatory requirements of the Fair Credit Reporting Act regarding the handling of disputed accounts.

The defendant credit bureau knew on January 12, 1981, that this was a "disputed account", not a "delinquent account", yet subsequently reported it as a delinquent account over 21 times.

The Chilton Corporation's admission on page 22 of their petition that had they known that James Schmidt was accused of making unauthorized charges on plaintiff's employee account, it would have been unreasonable to contact only him to verify the account, amounts to a judicial confession.

On February 25, 1987, the Chilton Corporation was overjoyed with the decision of the Court of Appeals for the Fifth Circuit in this case; On May 11, 1987, the Chilton Corporation found the decision devastating. The decision did not change.

The plaintiff sued defendant James Schmidt for continuous, malicious, tortious conduct causing damage. The plaintiff sued Sherwin-Williams as Schmidt's employer under the doctrine of respondeat superior. Plaintiff did not sue Sherwin-Williams on his employee account nor did they sue plaintiff on his employee account. The insistent reporting of "LITIGATION PENDING" on plaintiff's "delinquent" account with the Sherwin-Wiliams Company was pertinacious and contumacious.

ARGUMENT

(1) There is no connection between Pinner's obligation to the Sherwin-Williams Company and Chilton's many failures to comply with the requirements of the Fair Credit Reporting Act.

When the Chilton Corporation received the letter of January 11, 1982, from Pinner's attorney, they were required to clearly note the plaintiff's dispute, they were required to clearly note the plaintiff's reasons for his dispute, they were required to send a revised credit report to the Western Auto Stores showing the plaintiff's dispute and the plaintiff's reasons for the dispute, they were required to reinvestigate the disputed account using "reasonable procedures to assure maximum possible accuracy" of the information concerning the account, and they were required to delete the account from Pinner's credit file if they could not verify the accuracy of the account. They failed to comply with any one of these five requirements of the Fair Credit Reporting Act. They made one phone call, not to the Sherwin-Williams Company, but to the man the plaintiff accused of making unauthorized charges on the plaintiff's account. The Court of Appeals for the Fifth Circuit did not consider this one phone call to the accused to be a sufficient reinvestigation of the account, and found that lacking further verification, Chilton should have deleted the account as they were required to do by the Fair Credit Reporting Act. The philosophical question of whether or not the plaintiff owed any money to the Sherwin-Williams Company on his employee account has absolutely nothing to do with whether or not the Chilton Corporation failed to comply with the mandatory requirements of the Act. It is a non sequitur.

(2) A disputed account is not a delinquent account.

When the plaintiff last used his employee account in July of 1980, his account had a credit balance of $213.40. When the plaintiff received a statement from the Sherwin-Williams Company in November of 1980, it showed a balance due of $177.11. Since the plaintiff had not used his account from July to November of 1980 and since the statement of November, 1980, did not contain any documentary evidence showing how his account went from a credit balance of $213.40 to a balance due of $177.11, plaintiff went to see the District Credit Manager of the Sherwin-Williams Company and requested that he be furnished with copies of any invoices for which he owed Sherwin-Williams $177.11. He offered to pay for the copies and he offered to pay any invoices he had not yet paid. The District Credit Manager, who was a close personal friend of the accused, refused the plaintiff any documentation and insisted that the plaintiff pay by the statement alone. The plaintiff refused to pay by the statement alone, and quit in disgust. This was a most disputed account from its inception and plaintiff knew the accused, James Schmidt, was responsible. Since the filing of this suit in 1983, James Schmidt has been fired, Robert Stewart, the District Credit Manager, has been demoted to Manager of a small Sherwin-Williams store in Florida, and Alan Labbe, the District Manager, has been demoted to Manager of a small Sherwin-Williams store in Louisiana.

Be that as it may, the Fair Credit Billing Act, 15 U.S.C. Sections 1666a(a) and 1666a(b), draws a clear distinction between a "disputed account" and a "delinquent account" and provides that a disputed account must never be reported by a creditor to any third party as a delinquent account until such time as the creditor has provided the consumer with documentary evidence of his indebtedness and has allowed the consumer not less than 10 days thereafter to pay any undisputed amounts. The Court of Appeals for the Fifth Circuit found that the provisions

of the Fair Credit Billing Act were not triggered because the plaintiff failed to notify Sherwin-WIlliams in writing within sixty days of the November, 1980, statement that he disputed the balance due on the acount. Be that as it may, the Court of Appeals for the Fifth Circuit found as a fact that Sherwin-Williams reported this disputed account to the defendant credit bureau as a delinquent account in June of 1980, even though this disputed account did not come into existence until November of 1980.

The Chilton Corporation received notice on January 12, 1981, that this was a disputed account, not a delinquent account, yet they did not clearly note in the plaintiff's credit file that this was a disputed account until May of 1983, two months after the plaintiff sued them. They never did clearly note in plaintiff's credit file his reasons for the dispute. After the jury's verdict and the trial judge's denial of post trial motions, the Sherwin-Williams Company insisted that the Chilton Corporation remove from the plaintiff's credit file any mention of any Sherwin-Wiliams accounts. The District Manager and the District Credit Manager of the Sherwin-Williams Company testified that they knew of no other employee account that was ever reported to a credit reporting agency. The District Credit Manager was asked in Court why this particular account was reported to the defendant credit bureau a second time in December of 1980 when only $15.00 was due on said account and was not yet past due, and he replied that you would have to ask James Schmidt about that. The defendant credit bureau was reluctant even in late 1985 to remove the Sherwin-Williams accounts from the plaintiff's credit file; they seemed to be obsessed with trying to destroy the plaintiff's creditworthiness and this one particular Sherwin-Williams account was the only account spoiling an otherwise excellent credit rating.

You can no more make a delinquent account out of a disputed account than you can make a peacock out of a sow's ear.

(3) James Schmidt was nothing more than a psychopathic satyr.

The Chilton Corporation takes pleasure in repeating ad nauseam that James Schmidt was the most knowledgeable person for them to contact in their reinvestigation of this disputed account; that he was "the most senior Sherwin-Williams executive" to verify the delinquency of the plaintiff's account. James Schmidt was but the manager of a small paint store; he was not in a supervisory capacity to the plaintiff; plaintiff had his employee account with the Sherwin-Williams Company almost two years before he met James Schmidt; plaintiff did not like James Schmidt because James Schmidt was a middle-aged man who engaged in sexually harassing 18 year old girls who worked for Sherwin-Williams under his supervision; James Schmidt tried to physically force the plaintiff's girl friend to have sex with him when she worked at the store managed by James Schmidt. James Schmidt had absolutely nothing to do with the plaintiff's employee account other than his unauthorized charges on the plaintiff's employee account at a time when plaintiff was out of town on vacation. It was James Schmidt's own niece, who was the bookkeeper for the store managed by Schmidt, who showed the plaintiff on his return from his vacation that Schmidt was wrongfully using the plaintiff's account.

Robert Stewart, the District Credit Manager for the Sherwin-Williams Company, was the person who signed the Subscriber's Contract with the defendant credit bureau, and was the person who supervised the plaintiff's employee account. He was in possession of the documentary evidence showing the many debit and credit entries

made by James Schmidt on the plaintiff's employee account. He and the District Manager were the most senior Sherwin-Williams executives to contact to verify the accuracy of the information the defendant credit bureau was reporting concerning the plaintiff, but neither was ever contacted by the defendant credit bureau. And again, when Robert Stewart was asked in Court who reported this account in June of 1980 when it had a credit balance and who reported this account in November of 1980 when only $15.00 was due on the account, he replied, "You'll have to ask James Schmidt." This Chilton Corporation has assumed the air of a quasi-governmental agency unfettered by the Fair Credit Reporting Act and says unashameably that it is but a mere "conduit" for any information any subscriber wishes to publicize about any consumer. Any person having access to a subscriber's computer has instant access to anyone's credit and personal data. The jury and the trial judge tried to send a message to this defendant credit bureau that they must comply with the requirements of the Fair Credit Reporting Act in the future, but the Court of Appeals for the Fifth Circuit so softened that message as to encourage the defendant credit bureau into seeking this writ.

(4) This petition for writ of certiorari, or review, by the Chilton Corporation is but an afterthought, an expedient.

When the Court of Appeals for the Fifth Circuit denied the petition for rehearing filed therein by the Chilton Corporation, it advised the Chilton Corporation that it had so many days in which to seek a stay of the mandate. The Chilton Corporation did not seek a stay of the mandate within that period. After the mandate was issued, the Chilton Corporation asked the Fifth Circuit to recall the mandate and to stay the mandate pending their application to this Court for a writ of certiorari, or review. Then, on

February 25, 1987, the Chilton Corporation advised the Fifth Circuit in writing that they changed their mind and would not pursue an application for certiorari. See letter from Chilton Corporation to the Court of Appeals for the Fifth Circuit in Appendix. Then, the Chilton Corporation changed their mind again, and again asked the Fifth Circuit to recall the mandate and stay the mandate, and went so far as to suggest to the Fifth Circuit that plaintiff did not object to a recall of the mandate. The Chilton Corporation advised the Fifth Circuit that they had definitely decided to seek a writ of certiorari this time since the case involved some "novel issues.". Since the mandate could not be recalled except to prevent an injustice, the Fifth Circuit refused to recall the mandate The Chilton Corporation refused to pay the legal rate of interest on the compensatory damages and refused to pay any interest on the attorney fees. When the plaintiff forced the issue of legal interest on the compensatory damages and the attorney fees, the Chilton Corporation capitulated and paid the full amount of the judgment. They then decided for sure to seek this writ of certiorari on the basis that the decision of the Fifth Circuit in this case will have a devasting effect on credit and credit reporting. It is axiomatic that if the decision of the Fifth Circuit in this case was not going to have a devastating effect on credit and credit reporting on February 25, 1987, it is not going to have a devastating effect on credit and credit reporting on July 4, 1987. Some organization of credit reporting agencies seems to have an interest in avoiding punitive damages and attorney fees in these non-compliance cases and that may best explain this afterthought, this expedient.

(5) A petiton for certiorari must be free of scandalous matter.

When the undersigned first read the petition for certiorari filed herein by the Chilton Corporation, he was struck hard by the arrogance and intemperance of the

Chilton Corporation, and somewhat embarrassed as an officer of the Court. It characterizes the opinion of the United States Court of Appeals for the Fifth Circuit as "illogical"-page 3; "conjured up (to summon a devil by incantation)"-page 3; "contrary to basic common sense"-page-10; "fallacious (deceitful)"-page 13; "perverted (deranged)"-page 16; and "aberrant (abnormal)"-page 17. This is scandalous matter prohibited by Rule 34.6. of the Rules of this Court. I am sure that if I characterized an opinion of any of the Louisiana Courts, or the United States District Court for the Eastern District of Louisiana, or the United States Court of Appeals for the Fifth Circuit, I would be disbarred. But maybe, that is because I mean what I say. And I say that the only devastation which resulted from the opinion of the United States Court of Appeals for the Fifth Circuit in this case was that suffered by the plaintiff and his attorney who were led to believe by the United States Constitution, by the decisions of this Court and by the decisions of the United States Court of Appeals for the Fifth Circuit that a reviewing court was required to give deference to the jury's findings, especially as to credibility, and was never justified in substituting its conclusions for those of the jury and thereby compel a plaintiff to forego his constitutional right to the verdict of a jury and accept an assessment made partly by a jury and partly by a tribunal.

(6) The jury, the trial judge, and the United States Court of Appeals all agreed that the reporting of "LITIGATION PENDING" on the Sherwin-Williams account was inexcusable and inexplicable and a deliberate non-compliance with the requirements of the Fair Credit Reporting Act as to the assurance of maximum possible accuracy.

It was at the very moment that the Chilton Corporation decided to report the Sherwin-Williams account as a disputed account, sixteen months after they were notified

by the plaintiff's attorney that it was a disputed account, that they decided to report that there was "LITIGATION PENDING" on the Sherwin-Williams account, that plaintiff was being sued on the account. No one, absolutely no one, reported to the Chilton Corporation that plaintiff was being sued on the account. No one, absolutely no one, reported to the Chilton Corporation that plaintiff was suing Sherwin-Williams on the account. Plaintiff was suing James Schmidt and Sherwin-Williams, under respondeat superior, for continuous, malicious, tortious conduct on the part of James Schmidt towards the plaintiff such as slander, saying that plaintiff was on hard drugs and was wanted by the F.B.I. and the C.I.A., for making unauthorized charges on the plaintiff's employee account, for cheating the plaintiff out of his commissions on sales by changing the territory number on sales invoices, for trying to get the plaintiff fired when the plaintiff began processing his sales through another Sherwin-Williams store (other than the one managed by James Schmidt) to salvage his commissions, and for forcing the plaintiff to quit his job in protest after the District Credit Manager insisted that he pay his account by the statement alone without any documentation. The placing of that notation, "LITIGATION PENDING", on the Sherwin-Williams account in the plaintiff's credit file was the same as reporting that plaintiff was involved in an armed robbery without specifying that plaintiff was the victim. No wonder plaintiff was not even allowed to rent an apartment in his own name after the landlord entered the plaintiff's name into a computer. The placing of that notation on the Sherwin-Williams account in the plaintiff's credit file was intentional, deliberate, and purposeful on the part of the Chilton Corporation; it was not accidental, it was not innocent, it was not unintentional; it was not negligence. It was not accurate and it was willful. Are they really asking this Court to excuse and condone this non-compliance, as well as the five other acts of non-compliance?

CONCLUSION

The "novel questions" presented for review by the Chilton Corporation are so unsubstantial, immaterial, and irrelevant to their numerous failures to comply with the mandatory requirements of the Fair Credit Reporting Act as not to warrant any consideration by this Court by review; their petition for certiorari should be summarily denied.

Respectfully submitted,

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(504) 522-2414.

APPENDIX

DISCLOSURES—BILLING

§ 1666a. Regulation of credit reports

Reports by creditor on obligor's failure to pay amount regarded as billing error

(a) After receiving a notice from an obligor as provided in section 1666(a) of this title, a creditor or his agent may not directly or indirectly threaten to report to any person adversely on the obligor's credit rating or credit standing because of the obligor's failure to pay the amount indicated by the obligor under section 1666(a)(2) of this title, and such amount may not be reported as delinquent to any third party until the creditor has met the requirements of section 1666 of this title and has allowed the obligor the same number of days (not less than ten) thereafter to make payment as is provided under the credit agreement with the obligor for the payment of undisputed amounts.

Reports by creditor on delinquent amounts in dispute; notification of obligor of parties notified of delinquency

(b) If a creditor recieves a further written notice from an obligor that an amount is still in dispute within the time allowed for payment under subsection (a) of this section, a creditor may not report to any third party that the amount of the obligor is delinquent because the obligor has failed to pay an amount which he has indicated under section 1666(a)(2) of this title, unless the creditor also reports that the amount is in dispute and, at the same time, notifies the obligor of the name and address of each party to whom the creditor is reporting information concerning the delinquency.

PHELPS, DUNBAR, MARKS, CLAVERIE & SIMS
COUNSELLORS AT LAW

February 25, 1987

BY HAND

Clerk of Court
United States Court of
Appeals for the Fifth Circuit
600 Camp Street
New Orleans, Louisiana 70130

FILED
FEB 25, 1987

Re: Thomas K. Pinner v. James J. Schmidt, et al.
Civil Action No. 85-3524

Dear Mr. Ganucheau:

This letter will serve to confirm my associate's conversation today with Richard Windhorst regarding withdrawal of the Motion to Recall the Mandate and to Stay the Mandate, pending C.B.M. of Louisiana, Inc.'s application to the United States Supreme Court for certiorari. Undersigned counsel for C.B.M. of Louisiana, Inc. will not pursue an application for certiorari and accordingly the Motion to Recall the Mandate and to Stay the Mandate pending application for certiorari is moot and should be withdrawn.

With best regards, we remain,

Sincerely,

PHELPS DUNBAR MARKS CLAVERIE
& SIMS

By: /S/ Harry A Rosenberg/mna
Harry A. Rosenberg